

## REGULATION OF DIGITAL LENDING PLATFORMS BY THE FEDERAL COMPETITION AND CONSUMER PROTECTION COMMISSION – AN ANALYSIS OF THE GREY AREAS



The Nigerian financial services industry has experienced significant growth in the last couple of years, due largely to the entry of an increased number of Fintech companies into the market. Nigerian Fintech companies provide innovative cutting-edge products to their customers mostly through the internet, which have in turn improved financial inclusion, especially for the unbanked in Nigeria. One popular service offered in Nigeria is digital lending, which has become increasingly popular and enjoyed wide patronage due to its ease of access, minimal know-your-customer (KYC) requirements and near-instant approval.

For these reasons, digital lending services provided by Fintech companies are preferred over lending services provided by traditional banks. Notwithstanding these benefits, there have been increasing cases of unethical debt collection practices<sup>1</sup> and violation of consumers' rights by some digital lending platforms. In a bid to curb these unethical practices and protect the rights of consumers, the Federal Competition and Consumer Protection Commission (the "FCCPC") issued the Limited Interim Regulatory/Registration Framework

and Guideline for Digital Lending, 2022 (the "Guidelines"). The Guidelines was issued in exercise of the powers of the FCCPC under the Federal Competition and Consumer Protection Act 2018 ("the Act") and sets out the approach of the FCCPC in regulating digital lending and the requirements for approval/registration to carry out the business of digital lending in Nigeria.

In this paper, we will be reviewing the powers of the FCCPC to regulate digital lending platforms viz a viz the provisions of the Banks and other Financial Institutions Act 2020 (the "BOFIA") that vests the Central Bank of Nigeria (the "CBN") with powers to regulate banks and other financial institutions in Nigeria.

### Unethical Debt Collection Practices by Digital Lending Platforms in Nigeria

Overtime, there have been several complaints by customers whose privacy rights have been violated by digital lending platforms on grounds of their debt collection practices. These complaints culminated in the National Information Technology Development Agency ("NITDA") commencing an investigation into these practices and subsequently imposing a fine of N10,000,000 (Ten Million Naira) on Soko Lending Company Limited, a digital lending platform for the illegal use of customers' data without appropriate lawful basis, contrary to Article 2.2 of the Nigeria Data Protection Regulation ("NDPR").<sup>2</sup>

Furthermore, in December 2021, several digital lending platforms, were alleged to have issued several threatening text messages to their customers for

<sup>1</sup> This includes inappropriate mechanisms in recovering loans and inflated interest rates, charges, and fees, obnoxious and unethical exploitative practices by digital lending platforms.

<sup>2</sup> NITDA News, Press Release "NITDA Sanctions SokoLoan for Privacy Invasion" (NITDA, 17 August 2021) <<https://nitda.gov.ng/nitda-sanctions-soko-loan-for-privacy-invasion/4914/>> accessed on 30 March 2023.

failure to repay a loan.<sup>3</sup> These issues attest to the unethical debt collection practices adopted by digital lending platforms.

### The Guidelines and the BOFIA 2020 – Potential Conflict

While the Guidelines is a laudable innovation and seek to protect the interest of consumers by curbing unacceptable debt collection practices by digital lending platforms, the CBN is predominantly empowered to regulate the operations of banks and other financial institutions in Nigeria. Thus, the exercise of the FCCPC's power to regulate digital lending remains questionable.

Section 30 of the BOFIA empowers the Governor of the CBN to issue regulations, guidelines, and policies to banks, specialised banks, and other financial institutions to ensure responsible conduct, protect the interest of consumers of products and services of banks, specialised banks, promote competition in the Nigerian financial system and sustain public trust and confidence in the use of financial services in Nigeria. It is noteworthy that the said provision of the BOFIA applies notwithstanding the provisions of any other enactment.<sup>4</sup> Furthermore, section 65 (1) (a) of BOFIA clearly exempts the application of the provisions of the FCCPA to financial products, financial services, or transactions by a bank, specialised banks, or other financial institutions. From the foregoing provisions, BOFIA does not only confer exclusive regulatory powers on the CBN over banks and other financial

institutions, but it also expressly excludes the FCCPA from regulating banks and other financial institutions. The definition of other financial institutions as provided for in Section 131 of the BOFIA Act extends to digital lending platforms<sup>5</sup>. However, it should be noted that it is conceivable that some digital lending platforms may be licensed under the money lenders' law of a state, and thus not within the regulatory oversight of the CBN. In such cases, these money lenders acting as digital lending platforms are only authorised to provide their services within the state under which law, the money lenders license was issued.

In addition, a scrutiny of the FCCPA reveals that except for the Nigerian Constitution, the provisions of the FCCPA override the provisions of any other law in all matters relating to competition and consumer protection<sup>6</sup>. The FCCPC is further vested with concurrent jurisdiction as other government agencies in matters which affect competition and consumers in an industry to which the FCCPA applies. However, by the doctrine of *leges posteriores priores contrarias abrogant*, a rule of statutory interpretation, where an earlier legislation conflicts with a latter one, the latter law is deemed to have impliedly repealed the earlier one, thus it is arguable that BOFIA being a latter legislation is implied to have repealed the provision of the FCCPA with regard to its supremacy over all other laws relating to competition and consumer protection.

While several regulators may simultaneously regulate an industry or businesses within a particular industry,

services, mortgage refinance company, mortgage guarantee company, financial holding company or payment service providers regardless of whether such businesses are conducted digitally, virtually or electronically only and companies whose objects include factoring, project financing, equipment leasing, debt administration, fund management, private ledger services, investment management, local purchases order financing, and such other business as the Bank may from time to time, designate regardless of whether such businesses are conducted digitally, virtually or electronically only.

<sup>6</sup> FCCPA 2018, s 104.

<sup>3</sup> Sikiru Obarayese "How fintech platforms violate rights threaten customers to extreme" (Daily Post, 29 January 2022) <<https://dailypost.ng/2022/01/29/how-fintech-platforms-violate-rights-threaten-customers-to-extreme/>> accessed 30 March 2023.

<sup>4</sup> BOFIA Act 2020, s 30

<sup>5</sup> Section 131 of the BOFIA Act defines other financial institution as any individual, body, association or group of persons; whether corporate or unincorporated other than the banks licensed under this Act, which carry on the business of a discount house, bureau de change, finance company, money brokerage, authorized buying of foreign exchange, international money transfer

there are sector specific regulators primarily responsible for supervising businesses within that industry. An apt example is the concurrent powers of the Securities and Exchange Commission (SEC) and the FCCPC as it borders on merger transactions. SEC is the apex authority for the Nigerian capital market and is responsible for reviewing, approving, and regulating mergers, acquisitions, takeovers and all forms of business combinations and affected transactions of all companies<sup>7</sup>. However, in addition to the powers of SEC to regulate business combinations, parties to merger transactions are required to notify and obtain the approval of the FCCPC prior to the implementation of a merger<sup>8</sup>.

In the instant case, the CBN is undoubtedly responsible for regulating banks and other financial institutions, and by extension digital lending platforms licensed by it. However, the FCCPC is empowered to regulate and supervise the activities of all commercial undertakings in Nigeria to protect the interest and welfare of consumers. It is therefore arguable that the FCCPC is empowered to regulate digital lending platforms for the protection of consumers from the obnoxious practices of these platforms. Moreover, digital lending platforms licensed as money lenders under state laws would without a doubt have their consumer practices subject to the regulatory scrutiny of FCCPC rather than the CBN.

### Conclusion

On 23<sup>rd</sup> March 2023, the FCCPC published an updated list of approved money lenders and those that have obtained conditional approval from the FCCPC. This approval is undoubtedly predicated on compliance with the registration requirements set out in the Guidelines. The FCCPC further extended the deadline for registration of Digital Money Lenders to 27<sup>th</sup> March 2023.

We expect that both the FCCPC and the CBN would work jointly to align the provisions of the Guidelines and the relevant CBN laws and regulations in order to attain an effective and efficient regulatory regime for digital lending platforms. Such steps may be far-reaching in pointing stakeholders to the right direction especially as it relates to compliance with the relevant and applicable law. It would also go a long way in preventing a situation of regulatory overlap and conflicts between both regulators. Most importantly it would improve the consumer protection practices of digital lending platforms and minimise obnoxious practices that undermine consumer welfare.

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<sup>7</sup> Investment and Securities Act 2007, s 13 (a) (p).

<sup>8</sup> FCCPA 2018, s 93.

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